

72-2468

OGC 72-0545

18 April 1972

MEMORANDUM FOR: Director of Personnel

SUBJECT : Effective Dates Concerning General Walters
as Deputy Director

1. The President signed the commission appointing General Walters as Deputy Director on 11 April 1972. General Walters has not taken the oath required by law of new appointees (5 U.S.C. 3331). These facts present the need to determine the date on which General Walters' entitlement to pay as Deputy Director begins. That date would also be the date upon which his authority and responsibility as Deputy Director begin.

2. The leading decision of the Comptroller General pertaining to these questions (20 Comp. Gen. 90), in turn based on two earlier Supreme Court decisions, holds that "officers appointed by the President by and with the advice and consent of the Senate" (the DDCI is so appointed) are entitled to compensation "from the date of acceptance of the appointment after the issuance of the commission". There "must be some affirmative action on the part of the nominee to show his acceptance of the appointment after the issuance of the commission by the President". That opinion and those quoted or referred to therein do not attempt to prescribe actions which could constitute acceptance of the appointment. But it is apparent that acceptance is not contingent upon the taking of the oath.

3. It is our view that if it is determined that General Walters has performed the duties of the office since at least the date of the commission, he would have accepted the appointment as of that date and would be entitled to pay at the beginning of that time. Conversely,

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if it is determined that his activities to date have been by way of preparing himself for his new duties and if, at the ceremony on taking the oath of office, it is indicated that he is beginning to exercise his new duties, his entitlements and authority would begin as of that date.



Associate General Counsel

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Remarks: <p>Per our conversation of recent date, here is a copy of a memo by [redacted] discussing effective date of pay of the DDCI. You will note that the Director put out a notice indicating that General Walters became DDCI effective 2 May 1972 upon his swearing in on that date.</p> <p style="text-align: right;">[redacted] John S. Warner</p>			
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